

1    **FINANCE AND ADMINISTRATION CABINET**

2    **Office of the Secretary**

3    **(New Administrative Regulation)**

4    200 KAR 5:400. Kentucky resident bidder reciprocal preference.

5        RELATES TO: KRS 45A.490 - 45A.494, KRS 176.082, KRS 45A.050(7), KRS  
6    45A.070(1), KRS 45A.090(2), KRS 45A.180(1), KRS 45A.182(1)(c), KRS 45A.365, KRS  
7    45A.370, KRS 45A.375, KRS 45A.695, KRS 45A.745, KRS 45A.825, KRS 45A.853, KRS  
8    160.303, KRS 162.070, KRS 164A.575, KRS 164A.590, KRS 176.010.

9        STATUTORY AUTHORITY: KRS 45A.494

10       NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.494(6) requires that the  
11    Finance and Administration Cabinet promulgate administrative regulations to establish the  
12    procedure by which a reciprocal preference shall be given to Kentucky resident bidders. This  
13    administrative regulation establishes the procedures by which a reciprocal preference shall be  
14    given to Kentucky resident bidders.

15       Section 1. Definitions.

16       (1) "Contract" is defined by KRS 45A.490(1).

17       (2) "Nonresident bidder" is defined by KRS 45A.494(3).

18       (3) "Public Agency" is defined by KRS 45A.490(2).

19       (4) "Resident bidder" is defined by KRS 45A.494(2).

20       (5) "Response" means any bid or response submitted to a solicitation.

1 (6) "Solicitation" means an invitation for bid, request for proposal, advertisement for bid,  
2 or another formal method of soliciting a contract issued by a public agency.

3 Section 2. Claiming Resident Bidder Status.

4 (1) Any individual, partnership, association, corporation, or other business entity  
5 claiming resident bidder status shall submit along with its response a notarized affidavit that  
6 affirms that it meets the criteria to be considered a resident bidder as set forth in KRS  
7 45A.494(2).

8 (2) If requested, failure to provide documentation to a public agency proving resident  
9 bidder status may result in disqualification of the bidder or contract termination.

10 Section 3. Determination of Residency for Nonresident Bidders.

11 (1) The state of residency for a nonresident bidder shall be deemed to be its principal  
12 office as identified in the bidder's certificate of authority to transact business in Kentucky as  
13 filed with the Commonwealth of Kentucky, Secretary of State.

14 (2) If the bidder is not required to obtain a certificate of authority to transact business in  
15 Kentucky, its state of residency shall be deemed to be the mailing address provided in its bid.

16 Section 4. Applying the Reciprocal Preference

17 (1) Once all responsible and responsive bidders to a solicitation have been scored and  
18 ranked, the residency of each bidder shall be identified.

19 (2) A preference equal to the preference given or required by the state of the highest  
20 evaluated nonresident bidders shall be given to all responsive and responsible resident bidders.

21 (3) The responses shall then be rescored and re-ranked to account for any applicable  
22 preferences.

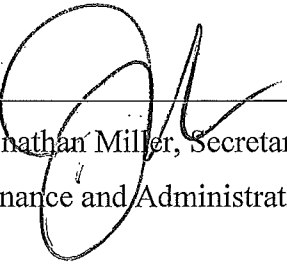
23 (4) In awarding a contract, resident bidders shall only receive preference against

1 nonresident bidders residing in a state that gives a preference to bidders from that state. This  
2 preference shall not be applied against nonresident bidders residing in states that do not give  
3 preference against Kentucky bidders.

4 (5) If a procurement determination results in a tie between a resident bidder and a  
5 nonresident bidder, preference shall be given to the resident bidder.

6 (6) Nothing in this administrative regulation shall result in a nonresident bidder receiving  
7 a preference over another nonresident bidder.

Approved:



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Jonathan Miller, Secretary  
Finance and Administration Cabinet

9-14-10

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Date

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this proposed administrative regulation shall be held on October 26, 2010 at 2:00pm EST in room 386 of the Capitol Annex, 702 Capitol Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at the hearing shall notify this agency in writing at least 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by close of business on October 19, 2010, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 1, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: DeVon Hankins, Policy Advisor, 392 Capital Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

## **REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

**Administrative Regulation #:** 200 KAR 5:400.

**Contact person:** DeVon Hankins, Policy Advisor, Finance and Administration Cabinet, Room 392 Capital Annex, Frankfort, Kentucky 40601, Phone: (502) 564-6660, FAX: (502) 564-9875.

**(1) Provide a brief summary of:**

**(a) What this administrative regulation does:** This regulation establishes the procedures by which a reciprocal preference shall be given to Kentucky resident bidders.

**(b) The necessity of this administrative regulation:** KRS 45A.494(6) requires that the Finance and Administration Cabinet promulgate administrative regulations to establish the procedure by which a reciprocal preference shall be given to Kentucky resident bidders.

**(c) How this administrative regulation conforms to the content of the authorizing statutes:** The Finance and Administration Cabinet is permitted by KRS 45A.494(6) to promulgate administrative regulations to establish the procedure for applying the preference set forth in that statutory section.

**(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:** It will establish the procedure by which the mandatory reciprocal preference to Kentucky resident bidders will be given.

**(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:**

**(a) How the amendment will change this existing administrative regulation:**  
N/A.

**(b) The necessity of the amendment to this administrative regulation:** N/A

**(c) How the amendment conforms to the content of the authorizing statutes:**  
N/A

**(d) How the amendment will assist in the effective administration of the statutes:**  
N/A

**(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:** All public agencies as defined in KRS 61.805 and all entities bidding for contracts with these agencies will be affected.

**(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:** Public agencies will be required to account for the reciprocal preference to Kentucky resident bidders in the scoring of their bids. Kentucky resident bidders will receive an advantage against nonresident bidders from states who give preference against Kentucky bidders.

**(5) Provide an estimate of how much it will cost to implement this administrative regulation:**

**(a) Initially:** Implementation can be achieved by existing staff without an increase in cost.

**(b) On a continuing basis:** Same as (a).

**(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:** Existing funds budgeted for staffing from the respective public agencies.

**(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment:** No increase in fees or funding will be necessary.

**(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:** No fees established or increased directly or indirectly.

**(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.)**  
Regulated entities, i.e. vendors bidding on state contracts, are tiered to the extent they meet the resident bidder requirements or they reside in a state that applies a preference against Kentucky bidders. Tiering on this basis is required by the enabling statute.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 200 KAR 5:400

Contact Person: DeVon Hankins

**1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?**

Yes ☒ No ☐

If yes, complete questions 2-4.

**2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?** All public agencies as defined in KRS 61.805 will be impacted.

**3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.** KRS 45A.490 - 45A.494, KRS 176.082, KRS 45A.050(7), KRS 45A.070(1), KRS 45A.090(2), KRS 45A.180(1), KRS 45A.182(1)(c), KRS 45A.365, KRS 45A.370, KRS 45A.375, KRS 45A.695, KRS 45A.745, KRS 45A.825, KRS 45A.853, KRS 160.303, KRS 162.070, KRS 164A.575, KRS 164A.590, KRS 176.010.

**4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.**

**(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?** No revenue will be generated.

**(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?** No revenue will be generated.

**(c) How much will it cost to administer this program for the first year?** Administration of this program should incur no additional costs.

**(d) How much will it cost to administer this program for subsequent years?** See previous response.

**Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.**

**Revenues (+/-):** Unknown.

**Expenditures (+/-):** Unknown.

**Other Explanation:** The actual cost of administering this program should be managed by existing contract administration staff without additional costs. However, applying the preference could increase the cost of contracts for public agencies if the reciprocal preference



results in an award being made to a Kentucky resident bidder who otherwise would not be the highest evaluated bidder. Preferences applied to nonresident bidders in their home states usually do not exceed five (5) percent.